



INVESTIGATIVE REPORT

Lori Torres, Inspector General

OFFICE: INDIANA OFFICE OF THE ATTORNEY GENERAL

TITLE: CONTINGENCY FEE CONTRACT

CASE ID: 2018-01-0031

DATE: February 1, 2018

After examination and review, Inspector General Chief Legal Counsel, Tiffany Mulligan, reports as follows:

The purpose of this Report is to fulfill the statutory requirements of Ind. Code § 4-6-3-2.5 regarding contingency fee contracts. This statute requires the Inspector General (“IG”) to review contingency fee contracts for possible conflicts of interests and potential Code of Ethics violations. Under this statute, an agency may not enter into a contingency fee contract unless the IG has made a written determination that entering into the contract would not violate the Indiana Code of Ethics set forth in Ind. Code 4-2-6 and 42 IAC 1-5 (“Code of Ethics”) or any statute or agency rule concerning conflicts of interests.

On January 30, 2018, the Indiana Office of Attorney General (“OAG”) notified the IG that it wished to enter into a contingency fee contract with Cohen Milstein Sellers and Toll PLLC (“the Firm”). The OAG’s request explains the Firm will represent Indiana in actions against makers of prescription opioid painkillers for deceptive and fraudulent marketing and will represent the interests of the State in actions against other defendants as they may be identified (the “Opioid

Litigation”). The Firm already has contingency fee agreements with other state and local units of government to represent their interests in the Opioid Litigation.

Pursuant to Ind. Code § 4-6-3-2.5(b), the OAG is required to make a written determination before entering into the contract that the contingency fee representation is cost effective and in the public interest. The OAG must consider five factors when making this determination as outlined by Ind. Code § 4-6-3-2.5(c). The OAG made such a determination and considered all of the factors outlined in the statute.

The OAG’s determination explains that the OAG needs additional resources and expertise for the Opioid Litigation because it is expected to be complicated, massive, time-consuming and expensive. The OAG’s determination also provides that the Opioid Litigation will involve certain novel areas of law that should be determined by Indiana state courts. The OAG’s determination explains that the State’s interests will be best-served by having counsel who already represents other governmental entities, has the resources to devote to the Opioid Litigation, has expertise in the intricacies involved, who is fully attuned to others who may also be liable and who will already be at the table if settlement discussions are involved. The OAG believes the Firm meets all of these criteria. Also the OAG’s determination explains that the OAG anticipates the Defendants, who are located all over the country, will seek for the actions to be removed to federal court and be consolidated as multi-district litigation. The OAG believes the national reach of the Firm will be an asset to the timely pursuit of the case.

Furthermore, Ind. Code § 4-6-3-2.5(d) requires the OAG to request proposals from private attorneys wishing to provide services on a contingency fee basis, unless the agency, in this case the OAG, determines in writing that requesting proposals is not feasible under the circumstances. The OAG invited four firms already involved in the Opioid Litigation to make presentations to

representatives of the OAG. All of the firms were willing to work with the fee schedule outlined in Ind. Code § 4-6-3-2.5 (g). The OAG choose the Firm because of its more flexible approach in recognizing unique issues presented by Indiana Law and its willingness to work closely with the OAG.

After careful examination and review, the IG has determined that the contract will not violate the Code of Ethics or any statute or agency rule concerning conflicts of interests. According to the OAG, the Law Firm does not employ any state employees, and no OAG employees or immediate family members have a financial interest in the Firm or the contract itself. Furthermore, the OAG provides that no OAG employee is contracting with or will be supervising the work of a business entity in which a relative is a partner, executive officer, or sole proprietor. To the best of our knowledge, neither the Firm nor any member of the Firm have a conflict of interest that would violate either the Code of Ethics or any ethics rules of the Indiana Supreme Court.

Based on the information provided, we find that entering into the contract will not violate the Code of Ethics or any statute or agency rule concerning conflicts of interest. This Report is issued in compliance with the above noted statutory requirements.

Dated February 1, 2018.

APPROVED BY:

A handwritten signature in black ink that reads "Lori Torres". The signature is written in a cursive, flowing style.

Lori Torres, Inspector General